

August 21, 1979

To whom it may concern:

The present criteria in the City's health benefit plans for its employees serve to discriminate against the spouses of homosexual employees. To eliminate this discrimination a new set of criteria must be developed.

This challenge to the present requirement is limited to the issue of discrimination against homosexuals. It is not my purpose to perfect the health benefit plans in all aspects but only to correct one defect. My approach then is to propose the minimum change necessary to eliminate the discrimination against homosexuals.

Strictly speaking, it is not my obligation to propose detailed criteria. However, as a practical matter, a solution will be expedited if I show that there is at least one possible and practical way to eliminate the discrimination. The City need not adopt my suggestion if it can develop alternative criteria to eliminate the discrimination.

Criteria for membership in the health benefit plans serve two purposes: to define who deserves the benefits and to limit the obligation of the health care providers. Based on the City's ordinances and its contract with the labor union, the issue of whether or not homosexual employees deserve all available benefits has been decided in our favor. I presume that the current discrimination is an oversight and not the result of a conscious decision to have one system in theory and another in practice. The City should support a modification which serves to correct this oversight.

The criteria serve a second purpose, which is to safeguard the legitimate interest of the health care providers. These organizations contract, for a fixed fee, to provide health services as needed to groups of people. The health care providers must be able to predict the obligation they are undertaking. The criteria for enrollment may legitimately serve to prevent the substitution of ill persons who would make inordinate demands on the health care providers. This is the only legitimate concern that the health care providers have in this situation. The new criteria should serve to provide approximately the same stability in the membership as in the present case.

Counterbalanced to that consideration is the need for the new criteria to respect the rights of the employees. The criteria must not violate the right of privacy, nor be so difficult or cumbersome as to discourage enrollment.

I propose that the current criteria for membership in the City's group health plans be augmented so that a homosexual employee may enroll her/his domestic partner in the City's health plans. A "domestic partner" would be defined as the person meeting certain requirements as certified on a sworn affidavit, signed by the employee, on file

with the City's Personnel Department. The requirements would be as follows: a person is a domestic partner if (1) she/he would be qualified to marry the employee but for the fact that she/he is the same gender as the employee; (2) she/he resides with the employee; and (3) she/he is declared as the sole domestic partner of the employee.

The first requirement eliminates persons who are married to someone else and persons whose relationships fall under special prohibitions (such as persons who are too young, mentally incompetent, or related too closely by blood, etc.). The second requirement is more restrictive than that imposed on legally-married couples--they may live separately. But since cohabitation is a usual characteristic of two people who regard themselves as a couple, and since elimination of this criterion would invite widespread abuse, it would be proper to impose such a requirement. The third requirement prevents an employee from claiming more than one domestic partner. Moreover, it parallels the public declaration which is one of the necessary steps in a legal marriage. The affidavit should also contain a perjury clause and a clause requiring notification of the City in the event that the domestic partnership is dissolved, since these clauses are already generally required within the application forms presently used.

There is no reason to presume that homosexuals are less honest than heterosexuals. We should not anticipate that there will be more attempts at substituting an ill "spouse" for a well one into the plans by homosexuals than there presently are by heterosexuals. At present the City and the health care providers assume the truthfulness of the bulk of applications from the employees. To change in that assumption only when homosexuals press for equal treatment would be itself a discrimination against us.

Finally, there are several criteria which are absolutely not acceptable. The City and the health care providers may not require any of the following:

- (1) a contract between the domestic partners (such a document is an internal arrangement between them; the City has no more right to their contract than to a contract between legally-married spouses).
- (2) joint ownership of property (an invasion of privacy and discrimination against the poor).
- (3) a particular tax status (this is merely the marriage criterion stated in a different form).
- (4) testimony from friends or family (an invasion of privacy--even the friendless are entitled to equal treatment).
- (5) any offensive or embarrassing requirement.
- (6) any difficult or protracted requirement.

My proposed criteria are offered as an example. Neither the City nor the health care providers are obligated to use these particular arrangements. However, this proposal would eliminate the discrimination while protecting the legitimate interests of all parties. Alternate plans must do the same.

Sincerely,

Thomas Brougham